

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF AGRICULTURE

DAIRY AND FOOD BUREAU

BULLETIN No. 326

PRELIMINARY REPORT

OF THE

Dairy and Food Commissioner

FOR THE YEAR 1918



FRED. RASMUSSEN,
Secretary of Agriculture.

JAMES FOUST,
Dairy and Food Commissioner.

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LETTER OF TRANSMITTAL

Harrisburg, Penna., December 31, 1918.

Hon. Fred. Rasmussen, Secretary of Agriculture.

Dear Sir: I have the honor to submit herewith a preliminary report of the Dairy and Food Bureau of the Department of Agriculture for the year ending December 31, 1918. It covers the operations for the year and contains such other details as may be useful for public information.

I have the honor to remain,

Very respectfully,

JAMES FOUST,
Dairy and Food Commissioner.



PREFACE

Owing to the fact that the Report of the Department of Agriculture for the year 1918, containing the Reports of the several Divisions of the Department, will not be ready for distribution for some time, the Dairy and Food Commissioner has wisely concluded to furnish the Head of the Department with the following preliminary report; and in order that the information it contains may have as speedy and wide circulation as possible, its publication as a bulletin of the Department is authorized.

FRED. RASMUSSEN,
Secretary of Agriculture.



THE CONDITIONS OF THE BUREAU'S WORK DURING 1918

In the usual order of things, the work of food control in the United States is so divided that no single organization and no officer of a single jurisdiction works alone in protecting the people's food supply and in making easier the practicability of a square deal between the honest business man and those whom he serves. Those food products that are the subjects of interstate commerce come under the supervision of the Bureau of Chemistry of the United States Department of Agriculture; those which are strictly intrastate, under that of the several state food control officers; and, in addition to these, many of our larger American municipalities have organizations for the enforcement of their own ordinances that deal, within the field prescribed by the State Legislature, with subjects such as that of the local milk supply, the local meat supply, the sanitary condition of local food shops, and other like matters that require a more constant and detailed supervision than State Legislatures have been prepared to provide for the entire state. For many years, the officers in charge of the enforcement of the food laws of these several classes of jurisdictions have consulted with one another and united in the formation of organizations for the discussion of their problems, with a view of securing the best common judgment upon the various phases of duty with which each is confronted. The result has been to bring a greater breadth of view and larger experience to the solution of these problems and to accumulate valuable information on the methods of procedure. Another result has been to secure greater uniformity in the practical application of the laws to the control or supervision of food production and sale, as respects its adulteration, misbranding and unsanitary condition. This uniformity has the further result, that the manufacturers and distributors, whose goods are sold in all the channels of trade in the Country, are subject, so far as the local laws permit, to similar treatment in every jurisdiction and similar regulation where conditions call for such executive action.

When the war broke out, America faced a new and different food problem, that of mobilizing our food supplies to aid in winning the war; and especially to relieve the distress of the citizens of those nations fighting by our side who were subjected far more severely than ourselves to the hardships and privations brought by this war. The problem was not, however, merely to mobilize exist-

ing food supplies, but to do so selectively and to stimulate the production of unusually large amounts of foods, particularly of those kinds our Allies and our army most needed and which could best be transported to places where these foods were to be used. The National Government accordingly provided for and organized the Federal Food Administration to lead and supervise the specialized mobilization and production which the situation required. The Food Administration, with its subordinate organization for every state, and for every government subdivision of the states, had not only to guide and inform the patriotic citizen desirous of aiding in every way possible to accomplish the purposes of its appointment, but also to protect him against those who were unwilling to be so guided and against those who sought to make the great change in food habit demanded of every citizen a source of additional difficulty and of unfair profiteering. In this emergency, I felt it to be my duty especially to render every assistance in my power to the State Food Administration. My force was constantly held in readiness to cooperate with it and did so cooperate in many ways.

During the period of the war, attention was given chiefly to the many problems created by the new emergency, although the agents in the Bureau were constantly alert against attempts to violate the food laws during the period of war adjustment. With the signing of the armistice and the rapid relinquishment by the Food Administration of certain phases of its work, the work of the Bureau returned to its normal balance.

The Work of the Year

As in preceding years, I have, for the purposes of this preliminary report, gathered into tabular form the principal facts regarding the current activities of the Bureau. The more extensive of these summaries are presented in the form of appendices to this report.

In Table A of the Appendix is presented a classified summary of the food articles sampled by the agents of the Bureau and analyzed by its chemists during 1918. Schedule B of the summary shows the number of prosecutions instituted during the year, with very few exceptions upon the basis of the current year's examinations, and the classification of the prosecutions ordered with respect to the food materials charged to be adulterated, misbranded, or otherwise illegal; also the distribution, as to frequency of the prosecutions instituted, in the several months of the year. In this summary appear very brief statements of the grounds upon which prosecutions have been instituted in the respective classes of cases, and finally, there is given (C) a list of the cases terminated during the current year, arranged in accordance with the respective acts under which prosecutions were brought.

In Schedules D and E of the Appendix are presented a statement of the Bureau's receipts from various sources and a classified account of the amounts expended from the appropriation made by the Legislature for the maintenance of the Bureau's work during the past year.

While the summaries above mentioned serve to give much information concerning the detail of the Bureau's work and of the character of the abuses in the food trade which have come to our attention during the year, there are certain facts concerning the relations which the work of the present year bears to that of earlier years of the Bureau that deserve special mention in the body of this report. The following comparative statement sets out all the principal facts concerning the work of the Bureau during the past twelve years:

Year.	Samples Analyzed.	Cases Terminated.	Receipts	Expenditures.
1907, -----	7,400	664	\$55,732 63	\$78,455 88
1908, -----	8,300	300	54,580 62	69,968 20
1909, -----	6,200	797	86,594 15	83,700 00
1910, -----	5,594	667	110,802 95	79,661 65
1911, -----	8,200	1,029	120,993 48	83,083 15
1912, -----	7,204	1,049	136,125 49	81,858 55
1913, -----	6,846	1,025	173,789 76	75,587 12
1914, -----	4,827	1,010	225,910 78	73,271 41
1915, -----	8,939	1,165	279,055 40	85,901 36
1916, -----	5,867	1,093	303,367 03	77,931 97
1917, -----	8,701	1,169	373,150 48	81,320 31
1918, -----	6,643	1,133	488,855 12	81,586 31
	84,661	11,101	\$2,408,957 89	\$952,325 91

This table shows that the receipts for the year 1918, which are deposited with the State Treasurer for the use of the Commonwealth, were \$407,268.81 in excess of the expenditures, which are provided for by a special appropriation, and that for the entire period of twelve years the total receipts were \$1,456,631.98 in excess of the expenditures.

It will be observed that for the years 1907 and 1908, the first two years of my responsibility as the head of the Bureau, the Bureau was not self-sustaining. Now the receipts are more than six times the amount of the expenditures, the former being \$488,855.12 for the last year and the latter \$81,586.31. In the twelve year period the receipts have aggregated \$2,408,957.89 and the expenses have been \$952,325.91.

The significance of the figures in the first two columns will not be clearly appreciated unless the duty imposed by the food laws upon the Bureau is fully understood. The laws placed under the Dairy and Food Commissioner for enforcement are police regulations, nothing more, nothing less. The quality and quantity of food for

eight millions of people are important, and to keep the food pure and free from adulterations and to prevent misbranding is essential. This is the work of the Dairy and Food Commissioner.

During 1918, samples collected by the agents and analyzed by the chemists of the Bureau totaled 6,643, while the grand total for twelve years is 84,661. Cases terminated last year amounted to 1,133, and for twelve years 11,101.

The business has increased steadily in volume from year to year, with the result that last year was a record breaker along all the lines of its activity. The receipts from all sources during the year were \$488,855.12, but it is interesting to note that only a very small portion of this large sum was collected in the form of fines. Oleomargarine licenses netted \$461,390.01 and cold storage licenses \$3,300, a total of \$464,690.01, leaving the receipts from fines but \$24,165.11.

The character and extent of food adulterations has changed very distinctively for the better during these twelve years. In the earlier years, many violations of the law were observed in the case of prepared foods sold from the grocer's shelves. In 1907, about thirty per cent. of all food samples of this class brought under examination were found to be adulterated. Now, adulterations of such articles are comparatively rare, and violations of the law are most frequently found in the sales of such articles as milk, ice cream, vinegar, non-alcoholic drinks, sausage and other meats; in the marking of cold stored foods and in the entering into cold storage of foods that are not in sound condition, or in the overlong storage of foods. It ought, in justice, to be said that the proportion of cold stored foods found unfit for human consumption is a very small fraction of the vast amount of food supplies that are annually cared for in the Pennsylvania cold storage warehouses.

The column stating the receipts does not state separately for the respective years of the Bureau, the portion of the annual receipts in each year's statistics collected as oleomargarine license fees. In a general way, however, the figures do indicate the progress in the sale of oleomargarine in this Commonwealth. During the last four years the sale of commodities of this group has practically doubled. Figures of the Federal Department of Agriculture indicate that, in fact, milk production has increased during these years; but before this nation entered the war the demands of the Allies for condensed milk and other milk products diverted a large part of these products usually consumed in America. The volume of milk represented in these exports far outran such increase in milk production as was attained during the period. The consequent scarcity of milk products and the correspondingly high prices for them undoubtedly stimulated the public consumption of oleomargarine.

Cold Storage Warehouses

The inspection of cold storage warehouses required by law has been constantly maintained during the year. The quarterly reports of these warehouses show the following quantities of foods in storage at the ends of the respective quarters of the year, the word "foods" being confined in its meaning to products of those kinds specified in the Cold Storage Act. It must be understood that this Act does not apply to cold stored fruits or vegetables, syrups, sugars and other products not of animal origin for which cold storage is customarily employed as a measure of preservation.

QUANTITIES OF FOODS IN PENNSYLVANIA COLD STORAGE WAREHOUSES

Foods.	Units of Quantity.	1918, Mar. 31.	1918, June 30.	1918, Sept. 30.	1918, Dec. 31.
Beef, -----	Lbs.	4,101,171	3,449,835	2,713,013	4,692,835
Beef (calf heads), -----	Pcs.		43	10	
Veal, -----	Lbs.	39,485	74,754	235,272	228,503
Veal sweetbreads, -----	Doz.	138	18	12	31
Mutton, -----	Lbs.	437,932	276,437	490,067	634,095
Pork, -----	Lbs.	2,544,104	2,833,531	3,673,114	3,237,480
Game, -----	Lbs.	1,702	1,448	1,360	1,892
Game, -----	Doz.	4		3	3
Game, -----	Pcs.	3			10
Fish, -----	Lbs.	1,503,571	1,646,720	3,565,639	4,124,359
Domestic poultry, -----	Lbs.	1,705,440	1,040,485	1,460,210	3,855,582
Eggs:					
In shell, -----	Doz.	188,150	13,328,360	12,480,174	2,179,239
Broken, -----	Lbs.	686,932	1,344,515	720,774	741,254
Butter, -----	Lbs.	1,848,693	3,901,159	6,842,421	3,269,294

It should probably be stated in connection with this table that the figures it contains do not represent the total quantity of foods that were entered for storage during the respective quarters, but only those amounts that remained in storage on the dates given. The figures, large as they are, do not, therefore, give an adequate representation of the important service which cold storage warehouses are rendering to the food consuming public.

The relations which the quantities in storage during 1918 bear to the quantities of cold stored foods reported for the earlier years are clearly shown by the following table, which presents the average quantities reported quarterly for each of the past four years with respect to the most important food items:

AVERAGES OF QUARTERLY REPORTS OF FOODS HELD IN COLD STORAGE

	1915	1916	1917	1918
Meats, other than game, lbs., -----	2,794,034	2,982,312	4,048,245	7,415,405
Fish, lbs., -----	2,642,245	2,552,336	2,950,257	2,710,147
Poultry, lbs., -----	2,286,277	2,481,841	3,768,484	2,015,429
Eggs in shell, doz., -----	9,748,831	7,555,143	8,837,778	7,043,986
Eggs, broken, lbs., -----	308,968	351,450	549,957	873,369
Butter, lbs., -----	7,017,156	5,059,392	5,616,228	3,715,392

In my preliminary report for 1917 I stated that the Cold Storage Act of 1913 had been made the subject of a highly important legal opinion during that year. In connection with a suit brought under the Act, Judge Carpenter, of the Allegheny Courts, handed down an opinion that Section sixteen of the Act, fixing time limits for the cold storage of foods, contravened both the Constitution of this State and that of the United States. It was also stated that, upon appeal, the case was reviewed by the Superior Court and that that court unanimously reversed the lower court and affirmed the constitutionality of the Act with reference to the point at issue. (Case of Edward S. Nolan, Appellant, vs. Edward P. Jones, Jennie Jamison, James Foust and Union Storage Company.) I have now to report in addition the fact that upon an appeal taken to the Supreme Court of the State, Judge Moschizisker handed down an opinion, which was filed on January 4th, last, affirming the opinion of the Superior Court. This opinion of Judge Moschizisker's is of such importance that I have added it to the Appendix of the present report. The question involved, as stated by the court, was: "The constitutionality of the act of assembly approved May 16, 1913, P. L. 216, known as the Cold Storage Act of 1913, in so far as it limits the time within which foods (particularly butter) may be held in cold storage, and in so far as it prohibits the sale, or offering for sale, of foods held in cold storage for longer periods of time than those specified in section 16 of said Act." After discussing separately the several grounds on which the constitutionality of the Act, as to the language of Section sixteen, was brought into question, the opinion states broadly: "We conclude that, in so far as the questions raised on this appeal are concerned, the Act of 1913, *supra*, is not in conflict with any provision of either the state or federal constitutions, and that the General Assembly, in enacting the law, did not transcend the limitations of legislative authority."

Canning Compound Case

In connection with a suit instituted by this Bureau in the District Court of Bedford County, as result of the sale as a canning com-

pound of a mixture consisting chiefly of boric acid, together with a few per cent. of the common salt, another opinion of far-reaching importance in the construction or interpretation of the General Food Law of 1909 was handed down. Under the provisions of that law, food is specifically declared to be adulterated if it contains *added* boric acid; furthermore, the law, with due notice to its title, defines the word "food," for the purposes of the Act, as including not only the usual staple food materials, but also any substance used as an ingredient in the preparation of food. The evidence introduced by the Commonwealth showed that the canning compound was sold for food preservation and that the directions for its use necessarily brought about the introduction of its boric acid into the food for whose preservation in cans it was to be employed. In view of the prohibitions of the sale of adulterated food and of the addition of boric acid to food, and of the definition of food, above mentioned, the Commonwealth contended that the said canning compound was a food under the provisions of the Act; that it was adulterated because boric acid had been "added" in it deliberately by the act of man, and that, consequently, that its sale constituted a violation of the Act. After hearing arguments upon the interpretation of the law, Judge Bailey, of the District Court, handed down an opinion not sustaining the contention of the Commonwealth regarding the meaning of the word "added" as used in the Food Act of 1909, to qualify the so-called "anti-preservative" section of the said Act. The case was brought upon appeal to the consideration of the Superior Court (Commonwealth of Pennsylvania vs. J. R. Fulton, No. 13 October Term, 1918); and after argument, the court, in an opinion handed down through Judge Henderson, reversed the judgment of the lower court and sustained the interpretation placed upon the law by this Bureau. Thereupon, the appellant took further appeal to the Supreme Court, January Term, 1919, No. 161. The Supreme Court affirmed the judgment of the Superior Court. Judge Henderson's opinion relates to a point so important in the law and affects in its scope so many articles of food that I have thought it desirable to print the opinion in full in the Appendix.

In this connection I desire to recommend the printing also of an opinion handed down by Judge Bell of the Court of Blair County, in relation to a rule to show cause why a portion of sample taken by the Commonwealth should not be turned over to defendants for analysis. The printing of the decision in this connection is recommended because the question upon which it is based is constantly arising in the enforcement of the food acts of the Commonwealth and because it is vitally important. The reasons for the Bureau's consistent refusals to grant applications for portions of the Commonwealth's

samples should be fully understood. The Bureau is guided in this practice by the opinion and by the advice of counsel. It wishes to take no unfair advantage of any defendant whose reputation for honesty is at stake. On the other hand, it must, to protect the people of the Commonwealth in the enforcement of food laws, be guided by the experience accumulated by our courts in the trial of like cases. A careful reading of this decision will show the grounds for the Bureau's practice, which is necessarily governed by the fact that in trials of this kind the burden of proof rests very heavily upon the Commonwealth.

Character of Food Adulterations Detected in 1918

The nature of the findings in the several cases of adulteration and misbranding in samples examined and reported upon during 1918 is set forth in Appendix C. It may be sufficient to remark at this point that no new forms of adulteration have been brought to light, and that the distribution of these violations of the law among the several classes of food products is, in general, quite similar to that reported for recent years.

There appears, however, to be an increasing tendency, especially in the so-called "dry" counties of the State, toward the sale of beverages bearing the semblance of non-alcoholic drinks but containing considerable amounts of alcohol. The present form and scope of the Non-Alcoholic Drinks Act are not well suited to enable the Bureau to deal satisfactorily with cases of this kind. The law does not specifically indicate the point of alcohol content below which a beverage may properly be regarded as a non-alcoholic drink. Since the term "Non-Alcoholic Drink" is commonly understood to include not only carbonated bottled pops and soda fountain beverages but also the common fruit juices, and since the latter usually contain small amounts of alcohol, it cannot safely be held that the presence of alcohol in very small amounts take a beverage out of the group or class of non-alcoholic drinks, as the name is used in the Act here referred to. The need for a clear understanding on the part of the public with reference to this point is of growing importance.

In quite recent years a large number of so-called 'egg substitutes' have appeared on the market. Occasional examinations of products of this group having indicated that they were, in general, composed largely or altogether of substances not egg-like in quality or food effect. Dr. C. H. LaWall, one of the chemists of the Bureau, was requested to make a comprehensive examination of a large number of these products. The results of his examination were separately used in General Bulletin No. 314 of the Department series. The investigation absolutely confirms the judgment based upon the earlier made

analyses. While a few of the preparations contained some dried egg or part of egg, the major portion of material is of another nature. In a great many cases no egg at all is present. Sometimes, even, there is very little material having any of the nutritive quality of eggs, although, of course, as the ingredients are, in general, of a food nature, they possess some nutritive value but not the value characteristic of eggs. It might possibly be urged that since eggs are employed in cooking not merely because of their particular nutritive qualities but because of the physical effects they have upon mixtures of food ingredients, such as cakes, for example, that the use of the name "Egg Substitute" is justified for mixtures that are not of the nature of eggs; that, indeed, the very presence of the word "Substitute" as a part of the name implies that no egg is present. The facts do not, however, give strength to this position. These starchy materials and the milk curd sometimes used instead of eggs, with or without yellow coloring matter, used for deceptive effect, do not impart to the mixtures the physical effects produced by eggs. Moreover, a very large proportion of these substitutes are sold with label declarations that are strongly misleading regarding the character and relative value, as compared with eggs, of these substitutes.

ACKNOWLEDGMENTS

In concluding this Preliminary Report, I desire to acknowledge my indebtedness to my superior officers for their counsel and encouragement in the performance of my duties, and also to record my appreciation of the loyalty and earnest cooperation of the working force of the Bureau.

Very respectfully,

JAMES FOUST,
Dairy and Food Commissioner.

A. SUMMARY OF ARTICLES ANALYZED BY CHEMISTS OF THIS BUREAU DURING THE YEAR 1918

Article	Number Analyzed.
COLD STORAGE PRODUCTS:	
Eggs,	40
Fish, Flounders,	1
Fish, Herring,	1
Fish, (no name given),	3
Fish, Sea Trout,	1
Fish, Smelts,	1
Liver,	2
Pork Loins,	1
	<hr/> 50 <hr/>
DAIRY PRODUCTS:	
Butter,	469
Cheese,	10
Cream,	722
Milk, Butter,	1
Milk, Condensed,	2
Milk, Evaporated,	3
Milk, Skimmed,	19
Milk,	3,830
	<hr/> 5,056 <hr/>
EGGS:	
Dehydrated eggs,	2
Fresh, in shell,	39
Frozen, in shell,	51
Frozen egg whites,	3
Powdered eggs,	1
	<hr/> 96 <hr/>
ICE CREAMS:	
Cherry,	3
Chocolate,	24
Maple-Walnut,	3
Peach,	1
Pineapple,	2
Strawberry,	15
Vanilla,	307
	<hr/> 355 <hr/>
LARD,	<hr/> 2 <hr/>
	<hr/> 2 <hr/>
NON-ALCOHOLIC DRINKS:	
Alpha,	1
Apple ju,	1
Bevera,	6
Beverage, wild cherry flavor,	1
Bevo,	2
Birch Beer,	6
Bola,	1
Bruin,	1
Budd,	2
Cerva,	1
Cherry Cordial,	1
Cider,	52
Cider, Apple,	6
Cider, Apricot,	1
Cider, B. B.,	1
Cider, Champagne,	1
Cider, Cherry,	25
Cider, Grape,	10
Cider, Orange,	1

SUMMARY—Continued

Article	Number Analyzed.
NON-ALCOHOLIC DRINKS—Continued:	
Cider, Party,	1
Cider, Peach,	1
Cider, Port,	1
Coco-Cola,	1
Cremo,	1
Dixie,	2
Green Label,	1
Jamaica Giuger,	2
Juice, Apple,	3
Juice, Apple-Strawberry,	1
Juice, Grape,	3
Juice, Lemon,	1
Julep, Cherry,	1
Julep, Orange,	1
Kovar,	1
"Liberty"	1
Magno,	1
Merlbrew,	2
Mexican Hot,	1
Mexicola,	1
Moerlo,	1
Orangeade,	2
Pop, Cherry,	1
Pop, Grape,	3
Pop, Hi,	1
Pop, Pineapple,	1
Pop, Raspberry,	1
Pop, Strawberry,	8
Pop, Teaberry,	1
Quako,	1
Royal Prune,	1
Soda, Buch,	1
Soda, Cherry,	18
Soda, Cream,	1
Soda, Grape,	1
Soda, Lemon,	15
Soda, (no flavor given)	2
Soda, Orange,	7
Soda, Pear,	5
Soda, Pineapple,	1
Soda, Raspberry,	23
Soda, Strawberry,	10
Soda, Vanilla,	1
Tonica,	4
Wine, Port,	1
Wine, Strawberry,	1
Zesto,	1
	260
OLEOMARGARINE	56
	56
SAUSAGE:	
Sausage, Bologna,	3
Sausage, Canned,	1
Sausage, Frankfurters,	23
Sausage, Fresh Pork,	28
Sausage, Liver Pudding,	4
Sausage, Vienna Style,	1
Sausage, Wiener,	1
	61

SUMMARY—Continued

Article	Number Analyzed.
VINEGAR:	
Vinegar, Amber,	4
Vinegar, Cider,	139
Vinegar, Distilled,	10
Vinegar, Golden Distilled,	1
Vinegar, Sugar,	2
Vinegar, Syrup,	1
Vinegar, White Distilled,	9
Vinegar, White Wine,	1
	<hr/> 167 <hr/>
FOOD PRODUCTS	
BREAD, CAKES AND PUDDINGS:	
Bread,	8
Bread Crumbs,	19
Biscuit, Currant,	2
Cake, Chocolate,	1
Cake, Coffee,	1
Cake, (Cut, no name given).....	12
Cake, Drop,	3
Cake, Golden,	2
Cake, Jelly Roll,	2
Cake, Sponge,	2
Gelatin,	14
Jellycon,	1
Jiffy Jell,	1
Puddine, Fruit,	1
Rolls,	1
Shortcake, Strawberry,	1
	<hr/> 71 <hr/>
CANNED FRUITS AND VEGETABLES:	
Asparagus tips,	2
Beans,	3
Cherries,	20
Corn,	1
Mince meat,	2
Mushrooms,	2
Peaches,	1
Peas,	8
Pumpkins,	1
Raspberries,	1
Sweet Potatoes,	1
	<hr/> 42 <hr/>
CONFECTIONERY:	
Almond Bars,	3
Chocolate Candy,	3
Chocolate Almond Candy,	1
Chocolate Drops,	1
Chocolate Nut Candy,	1
Fudge,	1
Horhound Candy,	1
Licorice Cigaretts,	1
Marshmallows,	5
Marshmallow Creme,	1
Marshmallow Eggs,	1
Nip and Tuck Candy,	2
Peanut Brittle,	1
Stick Candy,	2
	<hr/> 24 <hr/>

SUMMARY—Continued

Article	Number Analyzed.
FOOD PRODUCTS—Continued	
FLAVORING EXTRACTS:	
Extract, Lemon,	3
Extract, Raspberry,	2
Extract, Vanilla,	6
Vanilla Flavor,	1
	<hr/> 12 <hr/>
FLOUR:	
Flour, Buckwheat,	1
Flour, Corn,	1
Flour, Graham,	1
Flour, Pancake,	1
Flour, Potato,	9
Flour, Rye,	4
Flour, Wheat,	24
	<hr/> 41 <hr/>
FRUIT BUTTERS, JAMS, JELLIES AND PRESERVES:	
Butter, Apple,	3
Butter, Peanut,	6
Jam, Apple-Strawberry,	3
Jelly, Apple,	3
Jelly, Apple-Currant,	2
Jelly, Raspberry-Currant,	1
Preserves, Apple-Strawberry,	1
Preserves, Corn Syrup,	1
Preserves, Fig,	1
	<hr/> 21 <hr/>
HONEY AND SYRUPS:	
Honey,	3
Molasses,	2
Syrup, Cane and Corn,	1
Syrup, Fruit Punch,	1
Maple	3
Syrup, Raspberry,	1
Syrup, Table,	3
	<hr/> 14 <hr/>
CATSUPS, OILS, PICKLES, RELISHES, ETC.:	
Catsup, (no name given)	19
Catsup, Tomato,	26
Gherkins, Sweet,	2
Horseradish,	3
Mustard, Prepared,	2
Oil, Olive	89
Olives,	1
Pickles, Dill,	2
Pickles, Spiced,	1
Pickles, Sweet,	8
Pimentoes,	1
Relish, India,	1
Relish, Sweet,	1
Relish, Table,	1
Sauce, Royal Mint,	1
	<hr/> 158 <hr/>

SUMMARY--Continued

Article	Number Analyzed.
FOOD PRODUCTS--Continued	
FISH, CANNED, DRIED AND FRESH:	
Codfish, Dried,	8
Fish, Dried,	1
Fish, Flaked,	2
Fish, Gray,	1
Fish, Herring, Boneless,	4
Fish, Tuna,	1
Fish, White,	1
Lobster,	1
Mackerel Roe,	1
Oysters, Fresh,	2
Sardines,	6
Salmon,	2
Shrimp,	1
	<hr/>
	31
<hr/>	
MEATS, CANNED AND FRESH:	
Beef, Corned,	3
Beef, Loaf,	1
Beef, Potted,	1
Crab Meat, (Canned)	1
Ducks,	1
Guineas,	1
Ham, Deviled,	1
Meat, Goat,	3
Meat, Loaf,	5
Pork Chops,	1
Pork, Neck Pieces,	1
Pork, Salt,	1
Pork, Spare Ribs,	1
Steak, Fresh Beef,	3
Steak, Hamburg (Canned)	1
Steak, Hamburg (Fresh)	15
Veal Loaf,	5
	<hr/>
	45
<hr/>	
MISCELLANEOUS:	
Almonds,	2
Apples,	1
Bolted Meal,	1
Canrite Canning Compound,	1
Chicken Broth,	1
Clam Chowder,	1
Coffee, Ground,	6
Cocoa,	3
Corn Meal,	5
Cracker Crumbs,	2
Cranberries,	1
Cream Thickener,	1
Eee-o-Gene,	1
Egg Flake,	1
Egg-No,	1
Egg-O,	1
Egg Ringlets,	1
Egg Shade,	1
Grapes,	1
Health Bran,	1
Hominy,	2
Lekvar,	2
Macaroni,	1
Mammala,	1
Mint Jelly,	1
Noodles,	3
Nuts, Mixed,	2

SUMMARY—Concluded

Article	Number Analyzed.
FOOD PRODUCTS—Concluded	
MISCELLANEOUS—Continued:	
Paprika,	1
Pepper, Black,	6
Pepper, White,	1
Pie Filling, (lemon flavor)	4
Powder, Agg-O-la,	1
Powder, Baking,	2
Powder, Jelly,	1
Powdered egg,	1
Puffed Wheat,	1
Radishes,	1
Raisins, Dried,	3
Royal Creme,	1
Salt,	2
Sandwiches, Egg,	1
Sandwichola,	1
Sauer Kraut,	1
Sava-Egg,	1
Sawtay,	1
Sugar,	1
Tomato Paste,	1
Tomato Pulp,	4
	<u>81</u>
Total under head "Food Products,"	<u>540</u>
RECAPITULATION	
Butter,	469
Cheese,	10
Cream,	722
Milk,	3,855
Cold Storage Products,	50
Eggs,	96
Ice Cream,	355
Lard,	2
Non-Alcoholic Drinks,	260
Oleomargarine,	56
Sausage,	61
Vinegar,	167
Food Products,	540
	<u>6,643</u>

**B. NUMBER OF PROSECUTIONS ORDERED DURING THE YEAR, 1918,
ARRANGED BY MONTHS AND THE VARIOUS ACTS.**

Number Ordered During Each Month:		Number Ordered Under Each Act:	
January,	65	Cheese,	1
February,	17	Fruit Syrup,	1
March,	46	Fresh Meat,	2
April,	134	Egg,	9
May,	288	Sausage,	11
June,	78	Vinegar,	21
July,	51	Ice Cream,	42
August,	22	Oleomargarine,	24
September,	66	Cold Storage,	59
October,	176	Non - Alcoholic	
November,	56	Drinks,	117
December,	44	General Food,	137
		Cream and Milk,	619
Total,	<u>1,043</u>		<u>1,043</u>

324 less than were ordered during 1917.

C. CASES TERMINATED

THE FOLLOWING TABLE GIVES A LIST OF ARTICLES ANALYZED BY CHEMISTS AND FOUND TO BE IN VIOLATION OF THE FOOD LAWS, AND THE NUMBER OF SAMPLES OF EACH PRODUCT ON WHICH PROSECUTIONS WERE BASED AND TERMINATED.

CHEESE ACT, 1897, IN VIOLATION OF:

Cheese, skimmed milk cheese sold for full cream cheese....	1
	<hr/> 1
	<hr/>

COLD STORAGE ACT, 1913, IN VIOLATION OF:

Cold Storage Beef Liver, not properly marked.....	1
Cold Storage Butter, not properly marked,	1
Cold Storage Calf's Liver, as aud for fresh, not stamped, ..	1
Cold Storage Ducks, uot fit for food,	1
Cold Storage Eggs, as and for fresh eggs,	1
Cold Storage Eggs, uot stamped as required by law,	48
Cold Storage Fish, not properly marked,	8
Cold Storage Loins, as and for fresh, not stamped,	1
Cold Storage Turkey, not stamped as required by law,	1
	<hr/> 63
	<hr/>

EGG ACT, 1909, IN VIOLATION OF:

Eggs, opened and frozen, unfit for food purposes,	1
Eggs, unfit for food purposes,	6
Eggs, unfit for food purposes, to be used in bakery,	1
	<hr/> 8
	<hr/>

FOOD ACT, 1909, IN VIOLATION OF:

Apples, frozen, deeomposed, unfit for food,	1
Apricots, dried, contained undeclared sulphur dioxide,	1
Bread, erumbs, contained ground glass,	2
Bread, erumbs and veal loaf, contained ground glass,	1
Bread, unfit for food,	1
Bread, Gluten, misbranded, not Gluten bread,.....	1
Butter, adulterated,	3
Butter, containing excessive amount of water,	34
Butter, creamery, containing excessive amount of water, ...	2
Cakes, Drop, containiug eoal tar dye,	1
Cake, Strawberry short eake, containing eoal tar dye,	1
Cake, Sponge, containing eoal tar dye,	1
Cakes, eoutaining eoal tar dye,	4
Cakes, containing eoal tar dye, dirty, unfit for food,	1
Candy, containing resinous glaze,	1
Caudy, imitation ehoeolate butter ereams,	1
Candy, Nip and Tuck, containiug dirt, unfit for food,	2
Cherries, contained sulphur dioxide,	5
Corn Starch, sold for potato flour,	1
Crauberries, unfit for food,	1
Eggs, unfit for food,	3
Egg Noodles, containing eoal tar dye,	1
Egg Ringlets, unwholesome, unfit for food,	1
Extraet, Vauilla, Imitation of,	2
Extraet, Raspberry, Imitation of,	1
Figs, containing undeclared sulphur dioxide,	7
Fish, sold as and for fresh, deeomposed, unfit for food,	1
Fish, Cod, containing Borates,	1
Fish, Kippered Herring, Misbranded,	1
Fish, shredded, containing Borates,	2
Fish, Shredded, deeomposed, and unfit for food,	1
Flour, containing added ehlorine,	1
Flour, containing added nitrous acid,	8
Flour, potato, containing fifty per ceut. tapioca flour,	1
Food, Mammala baby, unfit for food,	1
Fudge, eoated with resinous glaze,	1
Gelatine, eoutainiug sulphur dioxide,	3
Gelatine, containing sulphur dioxide and arsenie,	1
Guinea, deeomposed, unfit for food,	1
Meat, deeomposed, unfit for food,	1
Meat, Goat, sold for lamb,	1
Meat, Pork, deeomposed, unfit for food,	2
Meat, Pork chops, unfit for food,	1
Meat, Sausage, deeomposed, unfit for food,	1
Meat, Sausage pudding, unfit for food,	1

FOOD ACT, 1909, IN VIOLATION OF—Continued:

Musk rats, decomposed, unfit for food,	1
Oil, Olive, adulterated with cotton seed oil,	4
Oysters, containing added water,	1
Peas, containing compound of copper,	1
Peaches, cauned, decomposed, unfit for food,	1
Peaches dried, contained undeclared sulphur dioxide, dirty, and unfit for food,	1
Peaches, containing undeclared sulphur dioxide,	4
Peanuts, salted, wormy, unfit for food,	1
Radish, Horse, unfit for food,	1
Sweet Marjoram, containing coriaria, leaf,	1
	<hr/>
	126

FRUIT SYRUP ACT, 1905, IN VIOLATION OF:

Syrup Grenadine, colored with coal tar dye,	1
Syrup Orange, phosphates, colored with coal tar dye,	1
Syrup Raspberry, colored with coal tar dye,	1
	<hr/>
	3

ICE CREAM ACT, 1909, IN VIOLATION OF:

Ice Cream, Chocolate, low in butter-fat,	1
Ice Cream, Chocolate Walnut Sundae, low in butter-fat, ...	1
Ice Cream (no flavor given), low in butter-fat,	6
Ice Cream, Vanilla, low in butter-fat,	32
	<hr/>
	40

LARD ACT, 1909, IN VIOLATION OF:

Lard, imitation, sold as pure lard,	3
	<hr/>
	3

MEAT ACT, 1905, IN VIOLATION OF:

Meat, Hamburg Steak, fresh, contained added sulphites, ...	2
	<hr/>
	2

MILK ACT, 1911, IN VIOLATION OF:

Cream, low in butter-fat,	99
Milk, dirty and unfit for food purpose,	1
Milk, low in butter-fat,	48
Milk, low in butter-fat, watered,	9
Milk, low in butter-fat and solids,	352
Milk, low in butter-fat and solids, partially skimmed,	19
Milk, low in butter-fat and solids, partially skimmed and watered,	5
Milk, low in butter-fat and solids, skimmed,	47
Milk, low in butter-fat and solids, watered,	41
Milk, low in solids, watered,	13
Milk, preserved with formaldehyde,	2
Milk, watered,	102
	<hr/>
	738

NON-ALCOHOLIC DRINKS ACT, 1909, IN VIOLATION OF:

Beer, Birch sweetened with saccharin,	1
Cider, contained a large amount of alcohol,	30
Cider, B. B., contained alcohol and colored with a coal tar dye,	3
Cider, Cherry, contained alcohol,	1
Cider, Cherry, contained alcohol and colored with a coal tar dye,	8
Cider, Cherry, misbranded,	2
Cider, Cherry, misbranded and adulterated,	1
Cider, Cherry, misbranded and intoxicating,	1
Cider, Cherry, misbranded, artificially colored and flavored, ..	5
Cider, Grape, contained alcohol,	1
Cider, Grape, contained alcohol and colored with a coal tar dye,	2
Cider, Port, contained large amount of alcohol,	1
Cordial, Cherry, misbranded,	1
Dixie, contained large amount of alcohol and colored with a coal tar dye,	1

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF—Continued:

Merlbrew, misbranded,	1
Pop, Cherry, misbranded,	2
Pop, Chocolate, misbranded,	2
Pop, Grape, misbranded,	2
Pop, Grape, misbranded, artificially flavored and colored with a coal tar dye,	1
Pop, Pineapple, misbranded,	1
Pop, Raspberry, misbranded,	2
Pop, Raspberry, misbranded, artificially colored and flavored	2
Pop, Strawberry, artificially colored and flavored,	1
Pop, Strawberry, misbranded, artificially colored and flavored,	8
Punch, Grape, misbranded, artificially colored and flavored, ..	1
Punch, Royal, contained alcohol and colored with caramel, ..	1
Soda, Cherry, misbranded,	2
Soda, Lemon and Raspberry, artificially colored and flavored, sweetened with saccharin,	1
Soda, Pear, artificially colored and flavored,	1
Soda, Pear, sweetened with saccharin,	1
Soda, Raspberry, artificially colored and flavored,	1
Soda, Raspberry, misbranded, an imitation,	3
Soda, Strawberry, misbranded,	1
Soda, Vanilla, flavored with coumarin,	1
Soda Water (No flavor given), artificially colored and flavored,	1
Soda Water (no flavor given), dirty, artificially colored and flavored,	2
Soda Water (no flavor given), contained saccharin,	4
Syrup, Raspberry, colored with a coal tar dye,	1
Zizz, contained large amount of alcohol,	1
	<hr/>
	102

OLEOMARGARINE ACT, 1901, IN VIOLATION OF:

Oleomargarine, Colored, not stamped as required by law, ..	3
Oleomargarine, Colored, served with meal,	3
Oleomargarine, Colored, sold for butter,	6
Oleomargarine, Colored, sold without license,	3
Oleomargarine, not stamped as required by law,	1
Oleomargarine, peddled from wagon,	1
Oleomargarine, sold at retail without a license,	6
Oleomargarine, sold at wholesale without a license,	2
	<hr/>
	25

SAUSAGE ACT, 1911, IN VIOLATION OF:

Sausage, Pork, fresh, containing added water and cereals, ..	1
Sausage, fresh, containing an excessive amount of water, ..	1
Sausage, Frankfurters, containing an excessive amount of water,	2
	<hr/>
	4

VINEGAR ACT, 1901, IN VIOLATION OF:

Vinegar, Amber, below standard in acidity,	1
Vinegar, Cider, artificially colored, contained no apple juice, ..	1
Vinegar, Cider, consisting of distilled vinegar and artificially colored,	1
Vinegar, Cider, watered,	2
Vinegar, Distilled, adulterated with sugar,	2
Vinegar, Distilled, artificially colored,	1
Vinegar, Distilled, colored as and for cider vinegar,	1
Vinegar, Distilled, colored with caramel for cider vinegar, ..	1
Vinegar, Distilled, colored with caramel and molasses vinegar,	1
Vinegar, Distilled, colored, below standard in acidity,	3
Vinegar, Distilled, Syrup, colored with caramel,	1
Vinegar, Distilled, White, below standard in acidity,	1
Vinegar, Sugar, misbranded and colored,	1
Vinegar, White, misbranded,	1
	<hr/>
	18

Total number of cases terminated,	1,133
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RECAPITULATION

CASES TERMINATED:

Cheese,	1
Cold Storage,	63
Egg,	8
Food,	126
Fruit Syrup,	3
Ice Cream,	40
Lard,	3
Meat,	2
Milk,	738
Non-Alcoholic Drinks,	102
Oleomargarine,	25
Sausage,	4
Vinegar,	18
Total terminated,	<u>1,133</u>

D. RECEIPTS OF THE DAIRY & FOOD BUREAU FOR THE YEAR OF 1918

Cheese Fines,	\$ 50 00
Cold Storage Fines,	426 00
Cold Storage Licenses,	3,300 00
Egg Fines,	425 00
Food Fines,	4,905 50
Fruit Syrup Fines,	60 00
Ice Cream Fines,	850 00
Lard Fines,	50 00
Meat Fines,	200 00
Milk Fines, 1901,	100 00
Milk Fines, 1911,	12,368 61
Non-Alcoholic Drink Fines,	1,980 00
Oleomargarine Fines,	900 00
Oleomargarine Licenses,	461,390 01
Renovated Butter Licenses,	600 00
Sausage Fines,	500 00
Vinegar Fines,	750 00
	<u>\$488,855 12</u>

E. AMOUNTS EXPENDED FROM THE APPROPRIATION FOR THE MAINTENANCE OF THE WORK OF THE DAIRY AND FOOD BUREAU OF THE PENNSYLVANIA DEPARTMENT OF AGRICULTURE FOR THE YEAR 1918.

Dairy and Food Commissioner's Salary,	\$ 3,999 84
Salary of Clerk, Dairy and Food Bureau,	1,500 00
Messenger's Salary, Dairy and Food Bureau,	900 00
Chemists' Services and Expenses,	14,483 81
Clerical and Stenographers,	5,530 00
Special Agents' Salaries,	25,427 50
Attorneys' Assistants and Special,	5,827 46
Traveling and Agents' Expenses,	12,786 99
Enforcing Cold Storage Law,	11,130 71
Total Expenditure for the year,	<u>\$81,586 31</u>

CONSTITUTIONALITY OF THE COLD STORAGE ACT OF 1913
IN THE SUPREME COURT OF PENNSYLVANIA

Western District

<p>Edward S. Nolan, Appellant, vs. Edward P. Jones, Jennie Jamison, James Foust and Union Storage Company.</p>	}	<p>No. 11 October Term, 1918. Appeal from Superior Court Filed January 4, 1919.</p>
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MOSCHZISKER, J.

The broad point we have to determine is set forth in appellant's statement of the "question involved", thus: "The constitutionality of the act of assembly approved May 16, 1913, P. L. 216, known as the Cold Storage Act of 1913, in so far as it limits the time within which foods (particularly butter) may be held in cold storage, and in so far as it prohibits the sale, or offering for sale, of foods held in cold storage for longer periods of time than those specified in section 16 of said act."

The statute in controversy is entitled "An Act for the protection of the public health and the prevention of fraud and deception, by regulating the storage and sale of cold storage foods", etc; and the section in question (16) provides, inter alia, that no butter which is held in cold storage for a longer period than nine months shall be sold, offered or exposed for sale.

Plaintiff contended in the court below, and, as appellant, urges here, that the provision under attack is contrary to the state and federal constitutions, in that it violates the bill of rights so far as the latter guarantees the free and unhampered enjoyment of property; that it, in effect, grants exclusive privileges and immunities to a special class and takes property without due process of law.

This appeal is from the judgment of the Superior Court, which overruled all these contentions, declared the legislation constitutional, and dismissed a bill in equity filed to restrain defendant from enforcing against plaintiff the provisions of the statute in relation to the storage of butter.

If the act is what it purports to be,—a legitimate exercise of police power by the state—the judgment complained of must stand; and the burden rests on plaintiff to demonstrate that it is not, if he is to succeed in his appeal.

Before examining the act itself we shall state the general rules and principles which must guide us in considering appellant's several criticisms thereof.

In order to serve the public welfare, the state, under its police power, may lawfully impose such restrictions upon private rights as, in the wisdom of the legislature, may be deemed expedient (*Enders vs. Enders, et al. Exrs.*, 164 Pa. 266, 271); for "all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community"; *Mugler vs. Kansas*, 123 U. S. 623, 665. A statute enacted for the protection of the public health, safety or morals, can be set aside by the courts only when it plainly has no real or substantial relation to those subjects, or is a palpable invasion of rights secured by the fundamental law. If "it does not appear upon the face of the statute, or from any facts of which the court must take judicial cognizance, that it infringes rights secured by the fundamental law, the legislative determination is conclusive"; *Powell vs. Pa.*, 127 U. S. 678, 685.

On the other hand, "to justify the State in interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means (employed) are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals; (that is to say), the legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations" (*Lawton vs. Steele*, 152 U. S. 133, 137); and, in deciding whether or not a statute is a legal exercise of police power, courts are not bound by the mere form of the act, but will "look at the substance of things"; *Mugler vs. Kansas*, *supra*, p. 661.

When, however, a law is enacted for "the protection of the public health" (as the present one purports to be), it must be assumed that the legislature proceeded "after full examination and on reasonable grounds" (*Com. vs. Pflaum*, 236 Pa. 294, 298, affirming 50 Pa. Superior Ct. 55, 61); for, "it is not a part of their (the courts') functions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions": *Powell vs. Pa.*, *supra*, P. 685. Moreover, no part of the federal constitution, or any of the amendments thereto, takes from the states the right to determine what shall be prohibited as prejudicial to the public good (*Mugler vs. Kansas*, *supra*, p. 663); and the fact that, under the peculiar circumstances of any given case, the particular article condemned

happens to be "wholesome" cannot affect the application of a legitimate police statute comprehending a whole class of objects, of which the kind in question is one, the class being such as reasonably justifies regulation for the preservation of the public health: *Powell vs. Com.*, 114 Pa. 265, 295; *id.* 127 U. S. 678, 684.

"The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large": *Powell vs. Pa.*, *supra*, p. 685. In every instance, the details of regulation are for the legislature to determine, not subject to judicial rejection, unless so palpably unreasonable as to suggest that their "real object is not to protect the community, or to promote the general well-being, but, under the guise of police regulation, to deprive the owner of his * * * * property, without due process of law"; *Mugler vs. Kansas*, *supra*, p. 669.

With respect to the Act of 1913, *supra*, it is a matter of common knowledge that food will start to decay even in cold storage, and many articles, when subjected to a long period of such treatment, although able successfully to withstand inspection immediately before removal, will thereafter rapidly putrify; hence it cannot be held, as urged by appellant, that any measure beyond enforced inspection is unreasonable.

Ordinarily, it is for the legislature to determine whether inspection or prohibition is the appropriate remedy (*Schellenberger vs. Pa.*, 171 U. S. 1, 16, 17); and there is nothing about the present statute which would justify us either in determining that the inhibition under attack is an unreasonable exercise of police power or in assuming the law was enacted otherwise than in good faith and for the public welfare.

As to the remaining attacks upon this act, in Pennsylvania, only the special legislation which is expressly forbidden by section 7, article 3, of our constitution, is invalid on that particular ground, and there is no prohibition to be found therein against special food laws; furthermore, cold storage food is now so universally used that it has, even in popular acceptance, fallen into a class by itself, which requires legislative regulation for "the protection of the public health." This is not undue, but just and proper classification; and, because an act such as the present, *ex necessitate*, fails to govern articles not placed in cold storage, that fact does not, in any legal sense, make the statute one granting special "privileges and immunities" to the owners of the latter class of food; or, to put it more concretely, if it were conceivable that butter could be preserved in salable condition for more than nine months without modern, scientific cold storage, and hence that owners thereof would be privileged

to dispose of their property, on the market, under circumstances which would deprive owners of cold storage butter from so doing, that would not make the legislation before us subject to the charge of granting exclusive privileges and immunities to a special class.

For example, in *Com. vs. Grosman*, 248 Pa. 11, we recently sustained an act regulating private banking, but non-applicable to bankers who had done business for seven years in the same locality and who were not engaged in the sale of railroad or steamship tickets, thereby leaving that class in possession of advantages, which might be called privileges and immunities, not possessed by those coming under the statute. Again, in *Com. vs. Puder*, 261 Pa. 129, we sustained an act regulating loans not exceeding \$300 to "individuals pressed by lack of funds to meet immediate necessities", thereby indirectly giving to the creditors of this class of borrowers decided advantages not possessed by other creditors.

The act of 1913, *supra*, is general in that it applies to a distinct and justifiable class, and all persons dealing in food articles, at their option, may or may not bring themselves within the statute; if, under some circumstances, those who do not use cold storage facilities happen thereby to gain an apparent advantage that is merely an incident, which in no proper sense can be accounted the granting of "exclusive privileges or immunities to a special class", as is illustrated by the cases last referred to and many others which might be cited.

Since the legislation in hand is a proper exercise of police power, there is no merit in the contention that the act deprives plaintiff of his property without due process of law. As said by Judge Shafer, of the lower court, in *Com. vs. Charity Hospital of Pittsburgh*, 198 Pa. 270, 277, "Lastly, it is claimed that the act in question (April 20, 1899, P. L. 66, prohibiting additional hospital buildings in congested portions of cities) is in violation of section 1 of the 14th amendment to the constitution of the United States, in that it is claimed to deprive defendant of its property, or the use of it, without due process of law, and denies to the defendant the equal protection of the law. It is true that the act does prevent the defendant from using its property in a manner which before was lawful, but the defendant, equally with all other persons, natural and artificial, holds its property subject to valid police regulation, made and to be made, for the health and comfort of the people, and if the act in question is such a regulation, the defendant has no cause of complaint." This was affirmed *per curiam*.

The particular facts in the present case will be found stated by President Judge Orlady, in *Nolan vs. Jones et al.*, 67 Pa. Superior Ct. 430; there is no question of interstate commerce involved, nor has any point of jurisdiction or procedure been brought before us for decision.

We conclude that, in so far as the questions raised on this appeal are concerned, the Act of 1913, *supra*, is not in conflict with any provision of either the state or federal constitutions, and that the General Assembly, in enacting the law, did not transcend the limitations of legislative authority.

The judgment of the Superior Court is affirmed.

INTERPRETATION OF THE GENERAL FOOD ACT OF 1909
IN THE SUPERIOR COURT OF PENNSYLVANIA,
SITTING IN PHILADELPHIA

<p>Commonwealth of Pennsylvania, vs. J. R. Fulton. Filed July 10, 1918</p>	{	<p>No. 13 October Term, 1918. Appeal by plaintiff from the order of the Court of Quarter Ses- sions of Bedford County.</p>
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HENDERSON, J.

The defendant was indicted for a violation of the Act of May 13, 1909, P. L. 520, in selling an article of food and an article used for, and entering into the composition of, and intended for use as, an ingredient in the preparation of food, described as "Mrs. Price's Canning Compound," which was adulterated in that it contained a proportion of boric acid. A verdict of guilty was returned by the jury and afterward judgment was arrested by the court and from that order the Commonwealth appeals. The title of the act is in part: "An act relating to food, defining food, providing for the protection of the public health, and the prevention of fraud and deception, by prohibiting the manufacture or sale, the offering for sale or the having in possession with intent to sell, of adulterated, misbranded, or deleterious foods." The second section contains a definition of the word "food" as follows: "The term 'food' as used in this act shall include not only every article used as food by man but also every article used for or entering into the composition of or intended for use as an ingredient in the preparation of food for man." Prohibition against the use of boric acid is contained in section 3 which provides "that for the purpose of this act an article of food shall be deemed to be adulterated * * * 5th. If it contains any added boric acid or borates," etc. The learned judge of the court below based the decision on a determination that the compound was not food and that it did not contain added boric acid within the meaning of the act. It was shown by the Commonwealth that the com-

pound was composed of boric acid and salt; 94.73% of the former and 5.07% of the latter. The compound was sold in packages which included among other statements the following:

"Mrs. Price's Canning Compound,

"Manufactured by

"The Price Compound Company,

"Minneapolis, Minn.

"May be used in canning all kinds of fruit, and is specially valuable for corn, Beans, Peas, Asparagus, Tomatoes, Etc.

"May also be used in making Catsup, Sweet Pickles or anything that is liable to ferment. It saves money, time, labor, worry, and insures the best results. See our recipe book for instructions on canning and pickling."

The contention of the Commonwealth is that the article sold was food and that it was also used and intended to be used as an ingredient in the preparation of food for man, and was, therefore, within the prohibition of the statute. It is conceded that the salt constituent of the compound was an article of food but the learned judge of the court below was of the opinion that in view of the small proportion of the food product and the large proportion of boric acid in the compound it ought to be assumed that the law was not intended to apply to a preparation composed almost wholly of an article which is not food; that it could not consistently be held that 95% could be added to 5%; that the use of the word "added" in the statute "in common parlance" signifies "to unite the lesser in essence with the greater; the smaller in volume, magnitude or importance with the larger." Pursuing this line of argument with illustrations the court reached the conclusion that the legislature never had in mind such an article of commerce as is under consideration in this case as an adulterated food. This construction, however, overlooks an important part of the statute which covers every article "entering into the composition of or intended for use as an ingredient in the preparation of food for man." In either case, therefore, whether the article sold may be classed as food or is merely a compound intended to be used in the composition of or as an ingredient in the preparation of food if it contain a constituent the use of which is prohibited in food it is within the purview of the statute. We are unable to agree with the learned court that the question must be disposed of on the basis of the proportions of the compound entering into the composition of food. Under such construction the purpose of the law might easily be defeated. A much smaller quantity of the prohibited article than that used in the canning compound might be used without violating the statute. If the proportion of 95% may be allowed, by like reasoning 80% or 70% would be permitted, for the larger could not be said to

be added to the smaller quantity. The smaller quantity could not "contain" the larger. But it was not the intention of the Legislature to determine the proportion in which food might be adulterated except in the limited use of sulphur dioxide and sodium benzoate as applied in certain articles. The United States statute contains similar language to that used in the act of 1909 and in *United States vs. Coca Cola Company*, 241 U. S. 265, the court considered the meaning of the word "added" and said: "Nor can we accept the view that the word 'added' should be taken as referring to the quantity of the ingredient used. It is added ingredient which the statute describes; not added quantity of ingredient." This construction is required in the light of the purpose of the legislation which was not only to prevent fraud but to provide for the protection of the public health. What is necessary to promote this object is a legislative question within constitutional limits and the court is controlled by the legislative declaration on the subject. The combination of boric acid with common salt amounts to an adulteration within the meaning of the statute. The term "adulteration" is used in a particular sense. It is the combining of a forbidden substance with an article of food to be sold to the public. But the case of the Commonwealth stands on a broader base than this. The act defines "food" to be not only every article used as food for man but also every article entering into the composition of or intended for use as an ingredient in the preparation of food for man. It is not contended that the canning compound was not to enter into the composition of food or not intended for use as an ingredient in the preparation of it. The contrary expressly appears. It was not only to be used in the preparation of food but was to become a constituent part thereof. It can not be contended that when a quantity of it was added to the can or jar in the preparation of food it did not become a part of the contents of the can or jar and of course it entered into the food preparation. The letter of the statute prohibits this. If it was within the power of the legislature, therefore, to define what should be considered food the defendant offended against the law. It is not to be questioned that the legislature in passing the act may declare its leaning and construction and such declaration is binding on the courts: *Com. v. Curry*, 4 Pa. Super. Ct. 356; *Com. vs. Kebort*, 212 Pa. 289. The definition of Section 2 of the act is sufficiently comprehensive to cover the case of a sale of this compound intended for use as an ingredient in the preparation of food. It is contended, however, on the part of the appellee that the title of the statute is not sufficiently clear to meet the constitutional requirement. We are unable to agree with this contention. The title relates to food; to the protection of the public health prohibiting the sale or offering for sale or having in possession

with intent to sell adulterated or deleterious foods. This title we regard as sufficiently comprehensive to impose the duty of inquiry as to the contents of the statute and persons dealing in food or in an article to be used in the preparation and composition of food are put on notice of all the statute contains. We are not required to apply critical or strained construction to legislation of this character nor are we at liberty to set aside the legislative will except from imperious necessity imposed by the Constitution. We find no such necessity in this case.

The judgment is reversed and the record remitted to the court below with direction to impose sentence according to law.

COMMONWEALTH versus FULTON.

STATE OF PENNSYLVANIA,
PHILADELPHIA COUNTY.

I, William A. Stone, Prothonotary of the Superior Court of Pennsylvania, do hereby certify that the above and foregoing is a true copy of the opinion in the above entitled cause, so full and entire as appears of Record in said Court.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court of Philadelphia, this 11th day of July, A. D. 1918.

WILLIAM A. STONE,
Prothonotary.

SUPREME COURT OF PENNSYLVANIA

Sitting at Philadelphia

Commonwealth of Pennsylvania
vs.
J. R. Fulton, Appellant

{ Filed January 4, 1919
January Term, 1919
No. 161

Appeal from Superior Court, reversing Judgment of Q. S., Bedford.

PER CURIAM:

The judgment of the superior court is affirmed on its opinion reversing the court of quarter sessions and remitting the record with direction that sentence be imposed according to law: Commonwealth vs. Fulton, 70 Sup. Ct. 95.

State of Pennsylvania
Eastern District

I, William A. Stone, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the Opinion in the above entitled cause, so full and entire as appears of record in said Court.

IN TESTIMONY WHEREOF I have
hereunto set my hand and affixed the seal
of said court at Philadelphia, this 20th
day of February, A. D., 1919.

WILLIAM A. STONE,
Prothonotary.

PARTITION OF COMMONWEALTH'S FOOD SAMPLES
IN THE COURT OF QUARTER SESSIONS OF BLAIR COUNTY

Commonwealth
vs.
J. A. Koller et al.

In re. rule to show cause why portion of sample taken by the Commonwealth should not be turned over to defendants for analysis.

BY THE COURT. So far as the rule for a bill of particulars is concerned, as ruled by the supreme court in Commonwealth vs. Powell, 23 Sup. Ct. 372, a bill of particulars in a criminal case is not a matter of right, but is only an appeal to the sound discretion of the court. My recollection is that in some of the pure food indictments in cases tried in this court there was simply an allegation in the indictment that the pure food act had been violated, without specifying the particular violation. I am inclined to think that that indictment was perfectly good. We have our act of assembly which provides that an indictment shall be deemed sufficient which simply follows the words of the act of assembly, and if this indictment had simply followed the words of the act of assembly, and been in the general form with which we found other indictments we would feel it but right and proper that the Commonwealth should specify the particular article of food which was supposed to be adulterated, and at least specify in a general way how that particular article of food was adulterated; but in the present instance the particular article of food is specified, to wit, chocolate, and there is a general statement as to

how it is adulterated. I think we will all agree on a moments reflection that the rulings of the appellate courts on this subject are perfectly right and proper. The authority cited by Mr. Baldrige is not an analogous authority at all. In the first place, as stated by Mr. Woodward, the physical examination to which the plaintiff is compelled to subject himself is always made—and I am speaking only as to the orders of this court—is always in the presence of the physician of the plaintiff. I have drawn frequent orders compelling plaintiffs in damage cases to submit to physical examinations, but I was always careful to provide that the physician of the plaintiff should be present so that no unfair advantage could be taken of the plaintiff, and that everything that was done there was done in the presence of the physician of the plaintiff. But it seems to me that the endeavor to liken a civil proceeding to a criminal proceeding is fallacious, and that is the vice of the offer. In a civil proceeding the plaintiff may be compelled to subject himself to a physical examination. At the same time he has the mutual and coordinate right of compelling defendant to disclose his case. Not so in a criminal case. The defendant can hold all the papers in his possession, and there is no power to compel him to produce them. He can sit on the witness stand and say I have a paper at home, and the court is powerless to make him produce evidence to establish his guilt. That is one reason. In the second place a civil suit is tried on the weight of the evidence. Each party comes in with an equal right to be heard as to the measure of proof, but in a criminal suit the burden is on the Commonwealth to establish the case beyond a reasonable doubt and these maxims of ours about the reasonable doubt that the jury must come to the firm, unwavering conviction that the defendant is guilty, have come down to us from times when judges were wont to hang a man for stealing a loaf of bread. Now I do not say in the present criminal procedure that we should get away from those old maxims, but I do say that while we adhere to those old maxims, which were adopted when they hung men for stealing a loaf of bread, such maxims ought not to be applied against the Commonwealth on the one side and then on the other hand the Commonwealth be compelled to disclose all their case, and the absence of precedent to my mind is strong proof that there is no warrant for a court compelling the Commonwealth to submit their evidence in advance to the defendant. It does seem to me that the able criminal lawyers who have defended criminals charged with grave offenses if there was any warrant for such a precedent would have brought it in force. Take for instance a murder case. The Commonwealth claim that they found on the prisoner a bloody shirt, and that those blood stains are human blood, not chicken blood, or blood which he received butchering a hog, but human

blood: now we all know that the experts on the part of the defense coach the lawyers for the defense while they cross-examine the experts of the Commonwealth, but I do not think there would be any warrant for a defendant charged with murder to say you must tear that shirt in two, and you must give my chemists one half of the alleged blood stains so that they can prepare a defense; or, to put it more mildly, that they can have the alleged blood stains analyzed. I do not know of any such precedent, and the very fact that Mr. Baldrige, after diligent search, has been unable to find one to my mind is proof that there is no warrant to force the Commonwealth to produce the evidence they are going to submit. As I said before, in a civil suit, under certain equitable rules, each side must apprise the other side of what evidence they are going to use, but I do not think it would be fair to say to the Commonwealth you must give the defendant all your side of the case so that he can examine and ransack it, and at the same time allow the defendant to keep his mouth shut. It seems to me that would be giving a defendant an unfair advantage, and it seems to me it would be unfair to compel the Commonwealth to allow a defendant to subject their samples to examination in advance, and I will overrule the application for the compelling of the production of such samples. As to experiments in open court I do not know to what extent I will go about a matter of the kind. I did rule in the formaldehyde cases where Mr. Hicks wanted to take a drink of the preservative and wanted the court to take a drink of it, and let the jury take a drink of it, I did rule that he could take a drink, but the court would not, and would not have the jury do so. Mr. Hicks was going to turn the court into a laboratory, and I think we said we would not have any laboratory here in court. I do not know to what extent I would go if there was an effort on the part of the defendant to examine samples by microscopic tests,—I will leave that matter open.

I hereby certify that I am the Official Stenographer to the Courts of Blair County, Pa., and that as such official stenographer I attended at the trial of Commonwealth vs. J. A. Koller et al., No. ——— October Sessions, 1904, and took full stenographic notes of all the proceedings of said trial, and that the foregoing opinion is a full and correct transcript from my original stenographic notes so taken as aforesaid.

J. F. MECK,
Official Stenographer.

Hollidaysburg, Pa.,
April 12, 1905.